

Remarks

The June 2, 2003 Official Action and the references cited therein have been carefully considered. In view of the amendment presented herewith and these remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that a shortened statutory response period of three months was set in the June 2, 2003 official action. The initial due date for response, therefore, was September 2, 2003. A Petition for a one (1) month extension of the response period is presented with this Amendment and Request for Reconsideration, which is being filed within the one (1) month extension of the response period.

As another preliminary matter, the Restriction Requirement set forth in the preceding official action has been repeated and made final. Applicant again respectfully submits that this requirement is improper for the reasons discussed below and requests rejoinder of product claims 9-20 with product claims 1-8.

In the event that claims 1-8 are finely held withdrawn from consideration in this application, applicant reiterates that the election of the subject matter of claims 9-20 for examination in this application is without prejudice to his right to file one (1) or more continuing applications, as provided in 35 U.S.C. §121, on the subject matter of the non-elected claims.

The June 2, 2003 office action requires the specification to have a Brief Description of the Drawing. Applicant has complied with this requirement by submitting the present Amendment to the Specification.

Turning to the substantive aspects of the June 2, 2003 official action, Claims 9-20 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over the combined disclosures of U.S. patent 5,817,658 to Chen et al (IDS Cite No. A4) and U.S. patent 6,379,726 to Tomasula. According to the Examiner, it would have been obvious from the combined disclosures of the cited references to (i) use the edible cellulose film of Chen et al on any food product including pizza and cheese when it is desired to protect such food from the external environment which can cause unfavorable consequence in the food product; (ii) use the film as a barrier layer in a pizza product to prevent moisture migration from the topping and sauce to the crust; and (iii) coat the film with lecithin, waxes or lipid to function as lubricant so that the film can be easily released from the food product.

The Examiner has also made of record certain additional prior art references, which were deemed by the Examiner to be pertinent to applicant's disclosure. Specifically, U.S. Patent No. 5,470,581 to Grillo et al and U.S. Patent No. 5,736,178 to Cook et al have been made of record, but no rejection has been based on the last-

mentioned two (2) references. Thus, the above-noted 35 U.S.C. §103 rejection of claims 9-20 is the sole ground set forth in the June 2, 2003 official action for refusing the present application.

Applicant, through his undersigned attorney, requested a personal interview with the Examiner Tran, which was held October 16, 2003. The courtesy extended to applicant and his attorney in granting this interview is appreciated.

The main purpose of the interview was to clarify an apparent misunderstanding regarding an important structural feature of the film sheet produced by this invention, which was referred to as "assymetrical film" in applicant's response to the restriction requirement. Film samples were presented for Examiner Tran's consideration. These included two (2) samples of cellulose film produced in accordance with the present invention and one (1) sample of a cellulose film prepared by a conventional casting process. Swatches of these samples are mounted on the attached Exhibit I and marked A1, A2, B1, B2, C1 and C2, respectively. Each set of two (2) film swatches (e.g. A1 and A2) is representative of the opposite surfaces of the same film sheet.

It was explained to Examiner Tran at the interview that the expression "assymetrical film" was used by applicant in the previous response as a concise way of saying that the film has anisotropic morphologies on its

opposite surfaces, as described at Page 5 lines 10-12 of the present specification. In other words, the side of the film sheet in contact with the drum surface is generally smooth, whereas the opposite side is highly irregular, with dendritic projections having dimensions that approach 25 to 50% of the apparent film thickness.

The "assymetrical" nature of the film sheets of the invention is reflected in the Claim recitation "each sheet having one side comprising one of said opposite coherent surfaces adhering to a surface of one of said rollers and a second side which is opposite the side adhering to the roller surface, and which has microscopic protuberences extending from the surface thereof, the one side of each sheet facing said roller surface being relatively smooth....". Thus, although the Examiner is literally correct in noting, at Page 2 of the June 2 official action, that the claims do not recite assymetrical film, the concept of assymetrical film is unquestionably set forth in the above-quoted claim language.

It was also pointed out to Examiner Tran at the interview that a coating process such as that used to produce cellulose film in Chen et al is incapable of making a film having the structural features called for in applicant's claims, as noted above.

At the conclusion of the interview, it was indicated that applicant would rewrite Claim 9 in

independent form and that the Examiner would reconsider both the restriction requirement and obviousness rejection of Claims 9-20 based on Chen et al in view of Tomasula. The substance of the interview is fairly set forth in the Interview Summary (Form PTO-413) in the official application file.

In accordance with the present amendment, Claim 9 has been rewritten so as to recite the manner of producing the edible film sheet referred to therein, as well as the "assymetrical" structure of the film sheet thus produced. This amendment is clearly supported by the original version of Claim 9 and entry thereof is respectfully requested.

Reconsideration and withdraw of the obviousness rejection set forth in the June 2, 2003 official action is likewise respectfully requested. The combined disclosures of Chen et al and Tomasula fail to render obvious the subject matter of Claim 9, as neither of these cited references teach or suggest an edible film sheet in which one side "has microscopic protuberences extending from a surface thereof" and the other side is "relatively smooth", as now required in Claims 9-20.

Applicant again requests reconsideration of the restriction requirement which is believed to be improper in view of the present amendment of Claim 9. As explained at the interview, applicant knows of no way other than that specified in Claim 1 (and now in Claim 9) to make a

continuous, assymetrical film. It certainly cannot be done using the casting technique described by Chen et al. See Example 4 at Column 12 of Chen et al. Cast film of the type exemplified in Chen et al are smooth on both surfaces, as evidenced from inspection of swatch C1-C2 in Exhibit I. By contrast, the method of the present invention produces a film sheet in which one surface has a rough texture resulting from microscopic protuberences generated during the film forming process, while the opposite surface is relatively smooth, as is evident from inspection of swatches A1-A2 and B1-B2 in Exhibit I.

Moreover, applicant fails to see how a prior art search of claims 9-20 as now amended, can be carried out without also searching the prior art relevant to the process of Claims 1-8, as it is the process that gives rise to the unique structural features of the resulting film sheet.

In summary, for the reasons given above, applicant respectfully requests rejoinder of process Claims 1-8 with product Claims 9-20 for examination in this application.

As noted previously, the Grillo et al patent and the Cook et al patent were mentioned in the June 2, 2003 official action, but were not applied against any of the pending claims. That being the case, no detailed description of these references would appear to be in order. Oetiker v. Jurid Werke v. G.m.b.H., 215 U.S.PQ 21

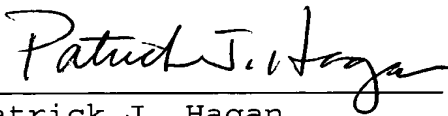
(D.C. Cir. 1982). Suffice it to say that the last-mentioned two (2) references fail to provide evidence of lack of novelty or obviousness with respect to the subject matter of Claims 1-20.

In view of the present amendment and foregoing remarks it is respectfully urged that the rejection set forth in the June 2, 2003 official action be withdrawn and that all of the pending claims be allowed, and such action is earnestly solicited.

Respectfully submitted

DANN DORFMAN HERRELL and
SKILLMAN, P.C.

Attorneys for Applicant

By 
Patrick J. Hagan
Registration No. 27,643

PJH:cmb

Enclosures:

-Exhibit I

-Return Postcard

-Petition for One Month Extension of Time